IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2132 OF 2004

ABDUL REHMAN ABDUL GAFOOR SHAIKH .. APPLICANT.

V/s.

The State of Maharashtra .. Respondent.

Shri Shirish Gupte, Sr. Counsel with Shri A.P. Mundargi and P.K. Dhakephalkar for the Applicant.
Ms. P.H. Kantharia, APP for the State.

CORAM : A.M.KHANWILKAR, J.
DATED : 29.10.2004

PC :-

. This is an Application by Accused No.1 for bail in connection with an offence registered with MRA Marg Police Station being C.R. No. 58/2003, subsequently registered with DCB CID being C.R.No. 20/2003.

2. The Applicant accused is charged for the offence punishable under sections 3(1)(ii), 3(2), 3(4), 3(5) and 4 of Maharashtra Control of Organised Crime Act, 1999.

3. It will be appropriate to straightway refer to

the charges for which the Applicant is being tried in respect of some of the offences. The same read thus :-

> CHARGE IN DCB CID C.R. NO. 20/03 (MRA Marg P.S.C.R.No. 58/03) U/Secs. 384, 387, 392, 34, 120(B) IPC R/W 3(1) (ii), 3(2), 3(4), 3(5) and 4 of M.C.O.C., Act, 1999
>
> Firstly : That you accused No.1 Abdul Rehman Abdul Gafoor Shaikh @ Rehman Boss, you accused No.2 - Abdul Sattar Haji Jiva Radhanpur @ Sattar Teli and you accused No.3, Iqbal Hasan Shaikh Ibrahim Kasker @ Arab Saab have entered into a criminal conspiracy alongwith the wanted accused namely Dawood Ibrahim Kaskar, Shaikh Babu Mohiddin Shaikh @ Chhota Shakeel, Tariq Abdul Kareem Parveen and other persons to commit continuing unlawful activities in the city of Mumbai from 1997 to date. In furtherance of your common intention and in pursuance of the criminal conspiracy entered by you all with the common object of acquiring Government properties belonging to Central Public Works Department, situated at 16 Saboo

Siddique Road, C.S.No. 14/1504, Fort Division, Musafirkhana, Mumbai and other properties in an around Mumbai. In furtherance of aforesaid conspiracy you all have obtained illegal permission from Municipal Corporation of Greater Mumbai, with full knowledge that the property cannot be acquired at it was reserved for Municipal School and Transport. In spite of aforesaid knowledge you all did commit illegal and unlawful activities by constructing illegal structures/ changing the structures on the properties for your unlawful gain and for the benefit of the Organized Crime Syndicate headed by Dawood Ibrahim Kasker, Chhota Shakeel and Iqbal Ibrahim Kaskar and thereby committed offences punishable under section 120-B, r/w. 384, 387, 392, r/w. 34 I.P.C. and 3(1) (ii), 3(2), 3(4), 3(5) and 4 of the M.C.O.C. Act, 1999.

Secondly: Pursuant to the criminal conspiracy you accused No.1 to 2 have unlawfully dispossessed the occupants from the originally existing structures belonging to the C.P.W.D.

by using force, threats and extortion and by intimidating the occupants to leave their occupancy by threatening their lives and properties, on behalf of accused No.3 Iqbal Kaskar and on behalf of the wanted accused Dawood Ibrahim Kasker, Chhota Shakeel, Tariq Parbveen and others for the pecuniary benefits of the Organized Crime Syndicate and also for your own benefits, by aiding and abetting each other and thereby committed offence punishable under section 3(2) of M.C.O.C. Act, 1999.

Thirdly : That you accused No. 1 and 2, as the frontmen of the organized crime syndicate and at the instance of accused No.3 Iqbal Kaskar under whose instructions on telephone from Dubai and under his dictates you are illegally holding the properties of the Central Public Works Department, by constructing illegal structures, and allowing various persons to use the same, by taking huge amounts from about 370 occupants, for the benefit of the Organized Crime Syndicate and for the benefit of the members of the Organized Crime Syndicate, in the name and

style of Global Marketing/ Sara Shoppe, Sahara Shoppe and Sara Corner from the period September, 2000 to date. Pursuant to the aforesaid conspiracy you are holding benami properties derived of obtained from commission of organized crimes and have been acquired through the organized crime syndicate funds, as the members of the Syndicate and thereby committed an offence, under section 3(4) and 3(5) of M.C.O.C. Act, 1999.

Fourthly : That you accused No. 1 and 2, as the frontmen of the Organized Crime Syndicate, and at the instance of accused No.3 Iqbal Kaskar under whose instructions on telephone from Dubai and under his dictates you are illegally holding the properties of the Central Public Works Departemnt, by constructing illegal structures, and allowing various persons to use the same, by taking huge amounts from about 370 occupants, for the benefit of the Organized Crime Syndicate and for the benefit of the members of the Organized Crime Syndicate, in the name and style of Global Marketing/ Sara Shoppe, Sahara

> Shoppe and Sara Corner from the period Septemebr, 2000 to date. Pursuant to the aforesaid conspiracy you are holding benami properties derived of obtained from commission of organized crimes and have been acquired through the organized crime syndicate funds, as the members of the Syndicate and is in possession of moveable and immovable property which you cannot satisfactorily account for and thereby committed an offence, under section 4 of the M.C.O.C. Act, 1999.

4. The above charge against the Applicant is founded on materials collected during the investigation of the offence. Statements of several witnesses have been recorded. The witnesses examined are essentially the persons who were earlier occupying tenements in the disputed property taken from the original lessee of the property owned by CPWD. They have alleged that they were threatened by the applicant herein to vacate the premises, mentioning that the property has now been purchased by the absconding accused Dawood Ibrahim Kasker, Chhota

Shakeel and they are interested in developing the said property. The occupants were offered payment and forcibly removed by the Applicant.

5. The other set of witnesses are the residents of neighbouring area, occupying huts, who were also allegedly forcibly removed by the accused giving threats in the similar manner and on payment. There are other occupants who have been examined as witnesses, who alleged that they were threatened and thereafter, forcibly removed without making any payment to them in lieu of the tenements possessed by them. Besides those persons, the statement of partners of the Global Marketing of which the Applicant was also one of the partner, have been recorded. The prosecution is relying on those statements as well, which suggest that the role of the Applicant was to ensure that the occupants in the disputed premises were evicted by whatever means so that the property could be developed.

6. The prosecution is also relying on the statements of the original lessee, who have stated to have transferred the right of the disputed property in favour of the Global Marketing. The prosecution is

also relying on the statements of co-accused No.9. Besides, the prosecution has also relied on the statements of the independent witnesses namely, Arif Suleman Lakadawalla and Yusuf Abdullah Shaikh to establish about the factum of the contact of the Applicant with the Chhota Shakil. Reliance is also placed on the statements of Amir Hasan Shabbir Ahmed Ansari, who is stated to be the mediator, who had gone for discussion at the godown of Julfikar and Aslam, when the Applicant had threatened not to intervene in the matter as the property was to be developed by Dawood Ibrahim and his brother Iqbal Kasker and Chhota Shakil. Reliance is also placed on the statement of Akbar Hussain Anwar Hussain (Photographer) who himself suffered the assault at the hands of the applicant and his camera was damaged by the applicant. He was present in the garage of the tenants Mohd. Kasam Abdul Gafar Shaikh at the relevant time. Reliance is also placed on the statements of the concerned persons as about the amount received by them from the Applicant and his men.

7. According to the prosecution although the occupants were paid substantial amount to the extent of 2,01,20,000/-, who were evicted on payment and by

giving threats. However, except Rs. 18,00,000/- paid to Taherbhai Mohsin alias Moonim (Lease holder) by cheque, the balance amount has been paid in cash and is obviously unaccounted. The source from where the said amount has been derived is not forthcoming. Whereas the Global Marketing, a Partnership firm was constituted by contribution of the partners only to the extent of Rs. 28,26,000/-. The transaction which was done in cash, no accounts have been maintained and that the partners in due course of time have virtually withdrawn their investment amount as disclosed by the Bank Statement. The summary of bank statement was relied upon at the time of hearing. The prosecution has also relied on the statement of the partners which indicates that an amount of Rs. 50/- lakhs was paid by the Applicant to Chhota Shakil by Hawala Transaction, which has not been accounted for. The statement of Mohd. Hanif @ Raju Hussain Jamma Patiwala (Hawala Operator), establishes this position. Reference is made to the statement of 7 witnesses to support the prosecution case of Hawala Transaction as payment to Chhota Shakil in the amount of Rs. 50/-lakhs was made by the Hawala Transaction. The prosecution case is that the disputed property is owned by CPWD. It was not open to the lessee to

create third party rights without prior permission. In any case, the permission granted was for 44 godowns on the ground floor and 40 on the first floor. Whereas, the applicant caused to construct 76 shops on the ground floor and 73 on the first floor. The factum of construction of the said shops is established from the statement of Jayant Sitaram Sane. It has also been brought on record that the applicant also constructed 115 shops under the names of Sara and Sahara Corners. Reliance is placed on the report of the Court Receiver which was submitted before the Special Judge, which establishes that the applicant had already constructed A.R. Guest House illegally, which was adjoining to the Sahara Shopping Complex and subsequently merged with the same. Besides it has been brought on record that the Architect representing the Global Marketing Firm had given a representation to the Corporation, stating that one M/s. Plexus Tech (P) Ltd., had requested to approve the plans at the earliest as the monsoon season was approaching. During the investigation it has now revealed that the letters purportedly addressed by M/s. Plexus Tech (P) Ltd., are the forged documents. On the basis of such material, the chargesheet has been filed against the applicant and other accused with which we are not

concerned at present for the purpose of the said offence.

8. To get over this position, according to the applicant accused No.1, however, the applicant had entered in the partnership deed alongwith the other partners in the name and style of Global Marketing amongst others for development of the disputed property. The agreement was entered into on behalf of the Firm with the original lessee of the property on 12th September, 1997. After obtaining necessary authorisation, proposal was submitted on behalf of the said Firm to the Corporation through the Architect. The said proposal was duly considered at the appropriate level and permission was accorded. It is only after the formal permission was granted, the construction on the disputed property was undertaken and the structure was erected. According to the applicant negotiations were carried on with the other occupants of the property and each of the occupant was suitably compensated for vacating the tenements in his possession. Agreement was entered into with each of the occupant and amount was also duly paid. After the construction was completed on the property the newly constructed tenements have been given to the purchaser

by entering into the formal agreement of accepting the deposits from them.

9. In substance, the case of the applicant is that the applicant has undertaken the construction activity, which was undertaken by the Firm of which the applicant was a partner. Assuming that some illegal structures were constructed on the property that by itself cannot be the basis to invoke the relevant provisions of MOCA. It is the case of the applicant that there is no evidence that the applicant is a member of any Organised Crime Syndicate and in such case, the charges referred to above against the applicant cannot be sustained. The case of the applicant is that all the transactions entered into by the Firm are legitimate and if some illegality is committed here and there in the said process cannot be the basis to invoke the draconian provisions of MOCA. It is the case of the applicant that the statements of the occupants which have been recorded during the investigation are of no consequence inasmuch as those occupants vacated the premises in the year 1997, after accepting the payment. Moreover, in their statement they have clearly conceded of having received the amount in lieu of vacating the premises in their

occupation. Moreover it is contended by the applicant that the amount that has been paid by the Firm to the occupants, has been mentioned in the books of accounts maintained by the Firm. According to the applicant, none of the statements recorded under section 164, would disclose even remote connection of Dawood Ibrahim with the project in question. According to the applicant the statements of the concerned witnesses, so-called occupants, recorded by the police have a common pattern inasmuch as it is first alleged that the applicant gave threats to the occupants, thereafter negotiated with the occupants for settlement and offered to pay and later on paid the amount which he thought appropriate for the occupant to vacate the premises. Four instances pertain to year 1997 and other four instances pertain to the year 2000 -2001. In the statement under section 161 recorded by the police, a reference is made to the involvement of Dawood Ibrahim in the project, whereas no such reference is found in the statements recorded under section 164. According to the applicant, thus the basis on which the allegations of Hawala Transaction is founded, is untenable. The same is belied from the evidence of Shankar Sadashiv Kamble, DCP inasmuch as in the cross- examination the version

given by this witness in respect of the Hawala Transaction, is virtually shattered as he has conceded that no requisite inquiries have been made by him. According to the applicant even if the entire evidence which is relied on by the prosecution is accepted as it is, no offence can be said to have been made out under the provisions of MOCA. It is therefore, submitted that the applicant deserves to be enlarged on bail.

10. Having considered the rival submissions, I shall now proceed to consider whether the applicant deserves to be enlarged on bail or not. It will have to be borne in mind that the applicant is charged with the offence punishable under the special enactment. As per section 21(4) of the said Act this court would be competent to release the applicant on bail only when it is satisfied that there are reasonable grounds to believe that the applicant is not guilty of such offence and that he is not likely to commit any offence while on bail, which is in addition to the other requirements provided by sections 437 and 439 of the Code. Assuming that it is possible for this court to take a view that the applicant if enlarged on bail, is not likely to commit any offence while on bail.

Even so, the question is : whether there are reasonable grounds to believe that the applicant is not guilty of the alleged offence. While considering this aspect of the matter, it will be appropriate to advert to the first charge against the applicant. The applicant is charged that he alongwith the other accused, with whom we are not presently concerned, entered into a criminal conspiracy alongwith the wanted accused namely Dawood Ibrahim Kaskar, Shaikh Babu Mohiddin Shaikh @ Chhota Shakil, Tariq Abdul Kareem Parveen and other persons to commit unlawful activities in the city of Mumbai from 1997 to date. It is alleged that in furtherance of such common intention and in pursuance of the criminal conspiracy, the applicant and others entered into a criminal object of acquiring Government properties belonging to Central Public Works Department, situated at Saboo Siddique Road, C.S. No. 14/1504, Fort Division, Musafirkhana, Mumbai and other properties in and around Mumbai. It is further alleged that in furtherance of the said conspiracy, the accused obtained illegal permission from the Municipal Corporation of Gr. Mumbai with full knowledge that the property cannot be acquired as it was reserved for Municipal School and Transport. It is then alleged

that the accused inspite of having knowledge, committed illegal and unlawful activities by constructing illegal structures / changing the structures on the properties for unlawful gains and for giving to the Organized Crime Syndicate, headed by Dawood Ibrahim Kaskar, Chhota Shakeel and Iqbal Ibrahim Kasker. The question is : whether the allegations would attract the stringent provisions of the Act, such as MCOC under Sections 3(1)(ii), 3(2), 3(4), 3(5) and 4 of the MCOC. Section 3(1)(ii) of MCOC, provides that whoever commits an offence of organized crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years, which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of Rs. 5 lakhs. "Organised Crime" has been defined under section 2(e) of the Act, which mean any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency. The expression

"continuing unlawful activity" has been defined in section 2(d) of the Act, which mean an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence. The expression "organised crime syndicate" is defined in 2(f) of the Act which means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime.

11. The charge against the applicant and other accused is that they had entered into a criminal conspiracy to commit continuing unlawful activities in the city of Bombay from 1997 to date. In support of this charge, materials have been relied by the prosecution, as alluded to above. The question is : whether the said material, if read, and taken as it is, will it be possible for this court to take the view that the applicant is not guilty of such offence.

To my mind, the materials already collected and pressed into service on behalf of the prosecution to which reference has already been made herein before in the shape of statements of witnesses, disclose that the accused resorted to continuing unlawful activity from 1997 in connection with the development of the disputed property. The question is whether there is material to connect or to suggest that the accused had entered into the criminal conspiracy alongwith the wanted accused. The prosecution is relying on the statements of witnesses who have been forcibly evicted as well as independent witnesses amongst others - Arif Suleman Lakadawala, Yusuf Abdullah Shaikh, which makes reference about the contact of the applicant with Chotta Shakeel. Similarly, the statements of Amir Hasan Shabbir Ahmed Ansari as well as Akbar Hussain Anwar Hussain (Photographer) also support the charge against the applicant of having entered into continuing unlawful activity in connection with the development of the disputed property. It is seen that the applicant became the partner of the Firm and undertook the responsibility of evicting all the occupants by whatever means. This position can be culled out from the statements of the partners of the said Firm. The applicant then administered threats to

the occupants in the name of Dawood Ibrahim Keskar and Chhota Shakeel. Indeed, the applicant offered certain amounts to the concerned occupants in lieu of their vacating the premises. However, the said occupants had no choice but to accept the amount as offered because of the threats administered to them by the applicant. Some of the occupants have received the amount but in their statements they have given circumstances in which they have accepted the amount. At this stage, it is not possible to go into the question whether the prosecution case is right or wrong but suffice it to examine whether the case as made out by the prosecution discloses the offence as alleged. In my opinion, the materials collected by the investigating agency does indicate continuous unlawful activity indulged into by the applicant and other accused in connection with the development of the disputed plot not only in the form of purchasing right from the original lessee which he was not entitled to create in favour of the third persons but also succeeding in getting permissions from the authorities. At this stage, it is relevant to point out that even the officials of the Bombay Corporation have been named as accused, being party to the criminal conspiracy. Be that as it may, the evidence

collected would suggest that the applicant accused evicted the tenants from the disputed plot by causing threats and force on the said occupants. Moreover, illegal structures have been erected far in excess of the permitted tenements on the disputed property. The prosecution has relied on the circumstances to show that the Partnership Firm was formed by the contribution of the partners only to the extent of Rs. 21,61,000/-. Whereas the Firm has paid in all sum of Rs. 2,01,20,000/- to various occupants. The substnatial part of this amount has been paid in cash and is not accounted and the source from where it is derived is not known, except the payment made by cheque to lease holder Teher Mohsinbhai @ Moonim in the amount of Rs. 18/- lakhs. Taking over all view of the matter, there is ample material against the applicant to show his involvement in the commission of the alleged offence. Thus at this stage, it is not possible to take a view that the applicant is not guilty of the alleged offence; and unless such a finding can be reached, it is not open for this court to enlarge the applicant on bail on account of bar under section 21(4) of the Act.

12 . It was vehemently argued before this court

that there is nothing on record, not even a whisper to suggest that the applicant is a member of the organized crime syndicate. This submission clearly overlooks that the applicant is charged for having entered into conspiracy within the meaning of section 3(2) of the Act. The applicant is not only engaged in conspiracy but also knowingly facilitated the commission of an organised crime. At this stage, it is not possible to test the materials on record on the touch- stone of hair splitting arguments canvassed before the court but the court will have to take the totality of circumstances into account to find out whether it is possible to take the view that the applicant is not guilty of the alleged offence. As mentioned earlier, in view of the overwhelming material on record, it is not possible to even suggest that the applicant is not guilty of any offence. Even if there is any material to support the prosecution case with one of the offences under the Act, as referred in the chargesheet, that can be a sufficient ground for rejecting the bail. As mentioned earlier, there is ample material to suggest about the involvement of the applicant in connection with the alleged offence. If this is so, it is not open for this court to enlarge the applicant on bail as prayed.

13. Assuming that the applicant may be justified in contending that there is hardly any evidence about Hawala Transaction on payment of Rs. 50/- lakhs being made to the Chhota Shakeel in that form. However, that will make no difference to the ultimate conclusion reached while deciding this application. Because, that is not a solitary allegation against the applicant. Whereas, the applicant is allegedly involved in the commission of the offence in connection with the development of the disputed property, in respect of which he was arrested. The prosecution has rightly adverted to the circumstances that the accused went on even to forge the documents when required to suit their convenience and to mislead the authority in the context of the correspondence with M/s. Plexus Tech Pvt. Ltd.. There is also confessional statement of co-accused Tariq Abdull Karim Pravin. The material on record thus clearly indicates that the applicant is the frontman of the organized crime syndicate which was involved in continuous unlawful activity in connection with the development of the disputed plot. From the materials on record it clearly emerges that the applicant was in touch with the gangster, under world persons namely,

Chhota Shakeel and Dawood Ibrahim. The applicant threatened the occupants by mentioning the involvement of such persons in the disputed plot for its development and also used force and assaulted the persons to subserve to their ulterior design. To get over this position, it was argued on behalf of the applicant that accepting the prosecution material at its best, it made out a case that the applicant resorted to dropping of the names of Chhota Shakeel and Dawood Ibrahim Keskar, but there is no material about the direct involvement of those two persons, for which reason it cannot be said that the applicant is a member of the organized crime syndicate. There is no substance in this submission. There is material on record to support the prosecution case about the connection of the applicant with the said persons. In that sense, it is not a case simplicitor of dropping of the names of underworld gangsters. In fact the applicant and other accused resorted to continuous unlawful activity in connection with the development of the disputed plots. It was also contended on behalf of the applicant that the acquisition of the property by Global Marketing, a partners ship firm, has not been treated as offence but it is only the applicant, who is one of the partner, has been named

as accused in the commission of the alleged offence. This submission though seems to be attractive, is devoid of merits. The statements of partners have been recorded. On fair reading of their statements, I am in agreement with the submission of the learned P.P. that it would indicate that the applicant had taken upon himself the task to remove all the occupants by whatever means. Other partners were not involved with the said process at all. In any case, merely because other partners have not been named as accused that can be no basis to hold that there are reasonable grounds to believe that the applicant is not guilty of the alleged offence. However, as stated earlier there is ample material on record to show about the involvement of the applicant in connection with the alleged offence. Accordingly, this application is devoid of merits and the same will have to be dismissed.

14. Hence, dismissed.

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